

Remarks

Claims 5-8 and 12 were pending in the application. Claims 5 and 8 are amended herein. Claims 6 and 7 are hereby canceled. New claim 13 is added herein. No new matter is added. Therefore, after entry of this amendment, **claims 5, 8, 12, and 13** are pending in this application. Consideration and allowance of the pending claims is requested.

Telephone Interview

Applicants thank Examiner McElwain for the courtesy of a telephone interview with their representative, Susan W. Graf, on October 1, 2009. During the telephone interview, Examiner McElwain confirmed that the pending Office action is a non-final Office action, rather than a final Office action (as indicated on page 5 of the Office action).

Information Disclosure Statement

Applicants thank the Examiner for considering the references cited in the Information Disclosure Statement submitted on April 9, 2007 and re-submitted on July 8, 2009.

Allowed Claim

Applicants thank the Examiner for indicating that claim 12 is allowed. As discussed below, claim 5 is amended herein to be consistent with allowed claim 12.

Claim Rejections under 35 U.S.C. § 112

Claims 5-8 are rejected under 35 U.S.C. § 112, second paragraph as allegedly indefinite in the recitation of “without a significant increase in long chain fatty acid components of seed oil.” Claims 6 and 7 are canceled herein, rendering their rejection moot. Applicants request reconsideration of claims 5 and 8 in light of the amendments made herein.

Claim 5 is amended herein to recite “wherein there is no statistically significant increase in *the proportion of* long chain fatty acid components of seed oil relative to seed oil from a plant of the same species not comprising the heterologous constitutive promoter operatively linked to the heterologous polynucleotide...” This amendment to claim 5 is consistent with the language of allowed claim 12. Support for this amendment may be found in the specification, for

example, at page 19, lines 24-31. Additional support may be found in the Declaration of Dr. D. Ry Wagner and supporting Exhibit A, which were submitted on December 18, 2008. The Declaration clearly indicates that the *proportion* of long chain fatty acid components in the seed oil of the transgenic plant comprising an amino acid sequence having at least 95% sequence identity to the amino acid sequence of SEQ ID NO: 2 is not significantly different from that of a control plant that does not comprise the amino acid sequence. Claim 8 is amended herein to depend from claim 5.

Based on the foregoing, Applicants request withdrawal of this rejection under 35 U.S.C. § 112, second paragraph.

Claim Rejections under 35 U.S.C. § 103

Claims 5-8 are rejected under 35 U.S.C § 103(a) as allegedly obvious over Jaworski *et al.* (U.S. Pat. No. 6,307,128). Claims 6 and 7 are canceled herein, rendering their rejection moot. Applicants request reconsideration of claims 5 and 8 in light of the amendments made herein.

As discussed above, claim 5 is amended to recite “wherein there is no statistically significant increase in *the proportion of* long chain fatty acid components of seed oil relative to seed oil from a plant of the same species not comprising the heterologous constitutive promoter operatively linked to the heterologous polynucleotide...,” consistent with allowed claim 12. As previously asserted in the response submitted with the Request for Continued Examination on July 8, 2009, Jaworski *et al.* **teach away** from production of a transgenic plant wherein expression of SEQ ID NO: 2 (or a sequence having at least 95% identity to SEQ ID NO: 2) in that plant confers a high oil phenotype of increased oil content “wherein there is no statistically significant increase in the proportion of long chain fatty acid components of seed oil,” as in the pending claims. Jaworski *et al.* describe a method of *altering the levels of very long chain fatty acids* in a plant by expressing a sequence identical to Applicants’ SEQ ID NO: 2 (*e.g.*, col. 3, lines 10-26; claim 20). Because the teaching of Jaworski *et al.* is directly opposed to that of the present method, one of skill in the art would not have a reasonable expectation of success in achieving the claimed method in light of Jaworski *et al.*

Claim 5 is also amended herein to recite “identifying a transgenic plant that exhibits the high oil content phenotype...,” consistent with allowed claim 12. Support for this amendment may be found in the specification, for example, at page 3, lines 29-34 and page 7, lines 16-21.

Based on the foregoing, Applicants request withdrawal of the rejection under 35 U.S.C. § 103(a).

New Claim

New claim 13, which depends from allowed claim 12, is added herein. Claim 13 recites “wherein the plant is selected from the group consisting of rapeseed, soy, corn, sunflower, cotton, cocoa, safflower, oil palm, coconut palm, flax, castor and peanut.” Support for this claim may be found in the specification, for example at page 3, lines 24-28; page 14, lines 1-8; and original claim 7.

Conclusion

Applicants respectfully submit that the claims are now in condition for allowance. If any issues remain, the Examiner is requested to contact the undersigned to arrange a telephonic interview prior to the preparation of any further written action.

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Respectfully submitted,

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cc: Docketing